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Via Electronic Mail to reg-comm@fca.gov

Laurie A. Rea
Director, Office of Secondary Market Oversight
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

Re: Advance Notice of Proposed Rulemaking: “Federal Agricultural Mortgage Corporation Governance; Farmer Mac Corporate Governance and Standards of Conduct”
12 CFR Part 651, RIN 3052-AC89, February 25, 2014

Dear Ms. Rea:

The Federal Agricultural Mortgage Corporation (“Farmer Mac”) appreciates the opportunity to respond to the request for public comment on the advance notice of proposed rulemaking (the “ANPRM”) published by the Farm Credit Administration (the “FCA”) regarding the FCA’s consideration of regulations related to Farmer Mac’s board governance and standards of conduct.¹ This response reflects the views of the Board of Directors of Farmer Mac (the “Farmer Mac Board”), as well as the members of Farmer Mac’s management.

The ANPRM notes that the FCA seeks input on how and whether the FCA might (1) enhance risk governance at Farmer Mac to further its long-term safety and soundness and mission achievement; (2) clarify the roles of the Farmer Mac Board and voting stockholders in the Farmer Mac director nomination and election process; (3) enhance the usefulness, transparency, and consistency of conflicts of interest reporting; (4) clarify conflicts of interest prohibitions; and (5) avoid repetitious disclosure and reporting requirements given the dual reporting responsibilities of Farmer Mac to the FCA and the U.S. Securities and Exchange Commission (the “SEC”), while maintaining effective and efficient FCA oversight of Farmer Mac. The ANPRM indicates that the FCA intends to use the information and suggestions it receives in response to the ANPRM for the development of guidance on Farmer Mac’s governance and standards of conduct.

Farmer Mac agrees with the FCA about the importance of effective risk governance to ensure Farmer Mac’s safety and soundness and welcomes any regulatory action that would avoid repetitious

¹ 79 Fed. Reg. 10426 (February 25, 2014).

disclosure and reporting requirements. However, Farmer Mac has concerns about the ANPRM's focus on areas such as Farmer Mac's director nomination and election process, conflicts of interest, and other related general corporate governance issues, especially considering the strength of Farmer Mac's existing corporate governance framework and the history of FCA's previous regulatory approach to corporate governance matters.

Farmer Mac was established and chartered by the Agricultural Credit Act of 1987 and charged with the mission of increasing the availability of credit in rural America through the creation of a secondary market for agricultural real estate mortgage loans, rural housing mortgage loans, and (through subsequent legislation) specified types of USDA-guaranteed portions of loans and rural utilities loans. Title VIII of the Farm Credit Act of 1971, as amended, is the primary statutory regime that governs Farmer Mac (the "Charter Act").² Farmer Mac is a unique entity by virtue of its status as a stockholder-owned, publicly-traded, federally-chartered corporation that is an institution of the Farm Credit System (the "FCS") subject to regulation by both the FCA and the SEC. Also, with two classes of voting common stock that each elects one-third of the Farmer Mac Board and the other one-third filled by individuals appointed by the President of the United States, the members of the Farmer Mac Board work together as an alliance unique in rural finance to accomplish Farmer Mac's important mission.

In recognition of this distinctive status, the Farmer Mac Board strongly believes that it is important to be transparent to all stakeholders and to emphasize the expectation that Farmer Mac's directors, officers, and employees adhere to the highest standards of corporate governance and ethics and business conduct in connection with their service to Farmer Mac. In carrying out its governance responsibilities, rather than wait for a corporate governance best practice to be mandated by the SEC, the New York Stock Exchange (the "NYSE"), or other regulatory authority, the Farmer Mac Board has a history of proactively and voluntarily adopting best practices in corporate governance. As described in more detail below, the Farmer Mac Board believes that it has achieved this goal by already implementing many best practices in corporate governance that effectively address most of the areas identified for comment in the ANPRM. For example, in December 2013, the Farmer Mac Board completed a year-long comprehensive process of reviewing its bylaws and other corporate governance documents with the assistance of outside corporate governance counsel reporting directly to the Farmer Mac Board, which resulted in Farmer Mac modernizing these documents to bring them into conformity with best corporate governance practices. Some of those enhancements included: strengthening an already robust process to manage conflicts of interest; providing for a more transparent and open process for nominating and electing directors that prevents any stockholders from being disenfranchised; clarifying directors' fiduciary duties to Farmer Mac; and adopting safeguards to protect Farmer Mac against any director's potential competing allegiances to other constituencies. In addition, Farmer Mac has for several years complied with enhanced SEC disclosure requirements for corporate governance and compensation matters, as well as the SEC's "say-on-pay" rules by submitting its executive compensation program each year to an advisory stockholder vote for approval. Unlike many public companies that have management

² 12 U.S.C. §§ 2279aa et seq.

representation on their boards, the Farmer Mac Board is composed entirely of non-employee directors. In addition, the Farmer Mac Board has also adopted independence standards that are stricter than the minimum prescribed by the NYSE, and the key committees of the Farmer Mac Board include only independent directors in accordance with NYSE requirements. All of these practices demonstrate the Farmer Mac Board's strong and unwavering commitment to adopting and complying with the highest standards of corporate governance.³ Farmer Mac believes that the corporate governance enhancements recently implemented have been successful in improving the functioning of the Farmer Mac Board and its ability to ensure that Farmer Mac fulfills its statutory mission of serving rural America.

The Farmer Mac Board also recognizes that effective corporate governance is an ongoing process that evolves to address current circumstances and developments and continues to seek additional best corporate governance practices to adopt. In that vein, the Farmer Mac Board has been proactive in thinking about how best to address emerging issues such as those related to diversity and risk governance. As described in more detail below, the Farmer Mac Board formed a Diversity Committee in December 2013 to gather information, raise awareness, and make recommendations on issues related to diversity in an attempt to formalize the process for bringing these issues before the Board. Subsequently, in April 2014, the Farmer Mac Board approved the formation of a separate Risk Committee in connection with Farmer Mac's annual Board organizational meeting scheduled for June 2014.

The ANPRM poses sixteen questions grouped in five different categories: (1) conflicts of interest; (2) director nominations and elections; (3) director representational and fiduciary duties; (4) Farmer Mac Board responsibilities in risk governance; and (5) general Farmer Mac Board governance. Before addressing any of these specific questions, Farmer Mac believes it is important to consider the role that Congress envisioned for the FCA in regulating Farmer Mac, a role that Farmer Mac believes does not encompass many of the areas identified for potential regulation in the ANPRM such as director nominations and elections and director representational and fiduciary duties. Farmer Mac appreciates the fact that the FCA has a history of respecting the unique position of Farmer Mac, not only as the only FCS institution established to operate a secondary market but also as the only entity regulated by the FCA organized as a public company that is also subject to regulation by the SEC and the NYSE. Farmer Mac respectfully requests the FCA to be mindful of this history and not to change its previous approach to regulating Farmer Mac in certain areas related to corporate governance. Farmer Mac hopes that the FCA will continue to respect the differences between Farmer Mac and the other FCS institutions that the FCA regulates and recognize the areas of corporate governance that do not directly relate to Farmer Mac's safety and soundness where the SEC and the NYSE have traditionally assumed primary jurisdiction and

³ As a public company, Farmer Mac's governance practices are subjected to annual review by the major proxy advisory firms such as ISS Governance Services, Inc. and Glass, Lewis & Co., each of which prepares an annual report recommending to stockholders how they should vote at Farmer Mac's annual meeting. Notwithstanding that these firms are non-governmental entities and do not have any official regulatory authority, their views on a public company's corporate governance are extremely influential and widely followed. Although it is the practice of these firms to recommend "withhold" votes for directors when a firm believes there are significant governance issues that are not being addressed, Farmer Mac has no recent history of any such "withhold" votes being recommended.

have developed significant expertise. Farmer Mac believes that the commitment to strong corporate governance demonstrated by the Farmer Mac Board is further justification for why FCA need not expand its role beyond serving as the regulator of Farmer Mac's safety and soundness to regulate in areas related to corporate governance.

The FCA's Role as Farmer Mac's Safety and Soundness Regulator

Congress organized Farmer Mac as an institution of the FCS, but intended for Farmer Mac to be "unique" in terms of its "powers, corporate structure, ownership, operations, and relations with other FCS entities and [the FCA]." ⁴ The Charter Act assigns to the FCA, acting through the separate Office of Secondary Market Oversight ("OSMO"), the responsibility for the examination of, and the general supervision of the safe and sound performance of the powers, functions, and duties vested in Farmer Mac by the charter and also authorizes the FCA, acting through OSMO, to apply its general enforcement powers to Farmer Mac. ⁵ In particular, Subtitle B of the Charter Act (12 U.S.C. §§ 2279bb through 2279bb-7) prescribes the primary manner by which Congress intends the FCA to fulfill its role as the safety and soundness regulator of Farmer Mac – through the regulation of Farmer Mac's required capital levels. The FCA also conducts an annual examination of various aspects of Farmer Mac's business practices, culminating in a report of examination that is reviewed with the Farmer Mac Board at a regularly scheduled meeting.

Unlike other FCS institutions, Farmer Mac is not chartered by the FCA, and the FCA does not possess general rulemaking authority over Farmer Mac. Thus, the FCA generally has not regulated Farmer Mac in areas that do not relate to Farmer Mac's safety and soundness. The FCA has largely and properly left these issues to the Farmer Mac Board and management, subject to the considerable body of law and regulations generally applicable to Farmer Mac as a public company. Farmer Mac believes that many of the areas identified in the ANPRM for possible future rulemaking do not directly relate to Farmer Mac's safety and soundness. Thus, regulation of these types of issues by the FCA would represent a departure from the FCA's traditional stance of leaving them to regulation by the SEC and the NYSE in their implementation of federal statutes related to the corporate governance practices of public companies. Also, the ANPRM points to no specific events or corporate governance breakdowns involving Farmer Mac to justify why the FCA is no longer comfortable deferring to the oversight that the SEC and the NYSE provide over Farmer Mac's corporate governance. ⁶ In fact, Farmer Mac has been very successful in fulfilling its mission

⁴ S. Rep. No. 100-230, 100th Cong., 1st Sess. 48 (1987). As the ANPRM recognizes, Congress was aware that Farmer Mac's regulator would need to give special considerations to Farmer Mac's unique position, instructing FCA, in exercising its regulatory authority over Farmer Mac, to consider the purposes for which Farmer Mac was created, the practices appropriate to Farmer Mac's conduct of a secondary market in agricultural loans, and the reduced levels of risk associated with secondary market transactions. See 12 U.S.C. § 2279aa-11(a)(2).

⁵ See 12 U.S.C. § 2279aa-11(a)(1).

⁶ The ANPRM generally refers to "recent events in the financial industry, increased sophistication in financial markets, and ongoing scrutiny of public and agency financial activities and related reporting practices" as making it "prudent" for

while at the same time operating a profitable business that has generated value for its public stockholders and proactively adopting best practices in corporate governance.

As the ANPRM notes, the last time the FCA issued regulations related to Farmer Mac's corporate governance and standards of conduct was more than two decades ago in response to specific legislation related to the financial disclosure and conflict of interest reporting by directors, officers, and employees of FCS institutions.⁷ That rulemaking required Farmer Mac to adopt a conflict-of-interest policy defining the types of relationships, transactions, or activities that might reasonably be expected to give rise to potential conflicts of interest. The rulemaking also required the reporting of sufficient information to inform Farmer Mac about potential conflicts of interest and required public disclosures about any unresolved conflicts of interest. The resulting regulations were targeted to the specific issue that was the focus of Congress in the related legislation, and the FCA's overall approach was flexible, as the FCA declined to prescribe recusal procedures or procedures for conflict resolution and chose to leave those areas to the discretion and judgment of Farmer Mac.

During the ensuing time, Farmer Mac has appreciated the commitment and dedication that the FCA and its staff have shown towards ensuring the safety and soundness of Farmer Mac. Farmer Mac has a history of regularly engaging with the FCA and regularly solicits and acts on feedback from the FCA. For example, the FCA recently provided a number of comments on bylaws amendments that had been adopted by the Farmer Mac Board. Although those comments did not relate directly to any issues of safety and soundness, representatives of the Farmer Mac Board and management team constructively engaged with FCA representatives to better understand the FCA's perspective and to develop a shared consensus of how best to address the identified issues. Farmer Mac believes that the FCA's input was insightful and helpful, and the FCA's participation in that process led the Farmer Mac Board to revise certain bylaw provisions in a way that led to an improved outcome.

Farmer Mac recognizes that any advanced notice of proposed rulemaking like the proposed ANPRM is a preliminary fact-finding mechanism that serves as a way for the FCA to determine whether it has an interest in exercising regulatory authority. To the extent that the breadth of the questions raised by the FCA in the ANPRM suggests that the FCA may be contemplating a departure from its traditional regulatory approach to Farmer Mac and an expansion of its role beyond that of serving as the safety and soundness regulator of Farmer Mac envisioned by Congress, Farmer Mac believes that the record described in this letter demonstrates that the existing system has worked well. Farmer Mac has a successful record of achievement and mission fulfillment, and the FCA has a demonstrated record of strong oversight as a regulator of Farmer Mac's safety and soundness and rule compliance. Therefore, there appears to be little reason to adopt a new model that may create uncertainty, regulatory overlap, and unnecessary diversion of resources and attention.

the FCA to review its current regulatory standards related to Farmer Mac's board governance and standards of conduct.

⁷ See 59 Fed. Reg. 9622 (March 1, 1994).

Prior to the ANPRM, the FCA's historical approach to the regulation of Farmer Mac's corporate governance has consistently and appropriately recognized the dual reporting responsibilities of Farmer Mac to the FCA and to the SEC. Farmer Mac is a public company listed on the NYSE and is subject to oversight by the SEC and the NYSE, particularly in the realm of corporate governance practices. Like any other public company, Farmer Mac files with the SEC annual and quarterly reports containing detailed financial and other information required to be disclosed by the SEC, current reports on Form 8-K to publicly report the occurrence of significant events, and proxy statements that provide stockholders with information relevant to their voting decisions. Accordingly, and understandably, the FCA has historically left the regulation of Farmer Mac's corporate governance practices to these regulators, in recognition of their preeminence in the arena of public company governance issues and their oversight of public companies generally, including Farmer Mac. That oversight has only become broader and deeper over the past decade with the passage and implementation of legislation such as the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), which are widely-recognized as the two most pivotal pieces of federal legislation intended to reform corporate governance practices at public companies. In recognition of the SEC's historical role as the nation's regulator of public companies and the domain expertise that the SEC has accumulated serving in that role for more than 75 years, Congress charged the SEC with the responsibility to implement these corporate governance reform statutes and delegated it extensive rulemaking authority. Although Congress could have chosen to provide for the FCA to have a role in applying these corporate governance reform statutes to Farmer Mac, Congress chose not to do so. Instead, the reform of corporate governance has been implemented by the SEC and made applicable to Farmer Mac no differently than any other public company, regardless of any public mission that Farmer Mac or other such companies might have.

In the twenty-six years that Farmer Mac has served rural America, this system of regulation has benefited Farmer Mac's stakeholders, as Farmer Mac has proactively and successfully adapted its governing principles to meet corporate governance best practices as they have evolved among public companies. Indeed, a large part of Farmer Mac's success is due to the governance model that Congress chose for Farmer Mac, which has supported Farmer Mac in fulfilling its statutory mission. In chartering Farmer Mac as a corporation, Congress intended that Farmer Mac's governance model should mirror that of other corporations, including the established principles of fiduciary duties of care and loyalty to stockholders that have been well-established for over a century. Formed as a corporation, it was also Congress's intent that Farmer Mac be governed by and operated under the direction of a board of directors with the powers that most other corporate boards have, including the power to prescribe bylaws not inconsistent with law, which in Farmer Mac's case also includes the Charter Act.⁸ Consistent with

⁸ In Section 8.3(c) of the Charter Act, Congress specifically provided that Farmer Mac shall operate under the direction of the Farmer Mac board of directors. Congress also specifically provided that the Farmer Mac board shall have the power to prescribe bylaws, not inconsistent with law, that shall provide for (a) the classes of stock of Farmer Mac; and (b) the manner in which (i) Farmer Mac's stock shall be issued, transferred, and retired; (ii) the officers, employees, and agents of Farmer Mac are selected; (iii) the property of Farmer Mac is acquired, held, and transferred; (iv) the commitments and other financial assistance of Farmer Mac are made; (v) the general business of Farmer Mac is

this intent, the Farmer Mac Board has established bylaws, a Code of Business Conduct and Ethics, Corporate Governance Guidelines, written charters for selected Board committees, and numerous written policies to be complied with by directors, officers, and employees of Farmer Mac. Many of these, including the bylaws and Code of Business Conduct and Ethics, are required to be publicly disclosed pursuant to SEC regulation. All of these instruments provide for the effective oversight and governance of Farmer Mac by the Farmer Mac Board and are consistent with how other public companies are governed.

Comments Related to Specific Questions Posed by the ANPRM

Conflicts of Interest (ANPRM Questions 1 through 3)

Farmer Mac believes that its existing process to manage conflicts of interest is robust and effective and therefore does not believe that any regulations prescribing the details of the recusal process, removal of directors, or disciplinary actions are warranted.

Farmer Mac recognizes that inherent in its unique organizational framework is the potential for perceived conflicts of interest, as elected directors often also serve as directors, officers, or employees of voting stockholders that may participate in Farmer Mac's secondary market programs. Despite Farmer Mac's distinctive corporate governance and stock ownership structure, the Farmer Mac Board has consistently demonstrated that it is fully capable of addressing conflicts of interest and has never had to disclose an unresolved material conflict of interest. In fact, the Farmer Mac Board has shown itself to be very thoughtful and proactive in addressing the potential for conflicting fiduciary duties by the adoption of various board policies. These include adopting a stringent code of conduct that addresses actual and potential conflicts of interest and requiring director candidates to confirm in advance of their nomination that they have no conflicts that could prevent them from complying with their fiduciary duties. Farmer Mac also: has adopted strict independence standards for directors beyond those required by the SEC through NYSE listing standards; has successfully implemented policies on related party transactions to assure that any transactions with director-related institutions are done on an arms-length basis and on the same terms and conditions as transactions with Farmer Mac's other customers and vendors; and provides detailed disclosures about related party transactions in its SEC filings. In addition, Farmer Mac solicits detailed disclosures each year from each of its directors to elicit any information that would suggest a potential or actual conflict of interest. Towards this end, Farmer Mac's bylaws were amended in December 2012 to require enhanced disclosures from Farmer Mac's directors and director nominees in an effort to elicit additional disclosures of possible conflicts of interest.

conducted; and (vi) the privileges granted by law to Farmer Mac are exercised and enjoyed. *See* 12 U.S.C. 2279aa-3(c). It is noteworthy that the language Congress chose to authorize the Farmer Mac Board to prescribe bylaws "not inconsistent with law" is less limiting in scope than a similar provision for the Federal National Mortgage Association, which authorizes bylaws "[w]ithin the limitations of law *and regulation*." 12 U.S.C. § 1723(b) (emphasis added).

Because of the unique structure of the Farmer Mac Board, Farmer Mac's directors must be particularly sensitive to those instances where a potential conflict of interest may be likely to become material. Therefore, Farmer Mac's Code of Business Conduct and Ethics provides that a director may not participate in any discussion or deliberation of, or any vote on, any question, issue, decision, or transaction in which it has been determined that the director has or appears to have a material conflict of interest. The Code of Business Conduct and Ethics provides guidance that whenever there is the slightest doubt as to the existence of a material conflict of interest, directors should disclose all facts material to their interests, unless disclosure would violate the confidence of the person from whom the information that would be the subject of the disclosure was obtained. If disclosure would breach such confidence, the director is required to recuse himself or herself from the discussion, deliberation, and vote but need not disclose the confidence.

During the last several years, the Farmer Mac Board has proactively amended Farmer Mac's Code of Business Conduct and Ethics to strengthen already-existing substantial provisions governing conflicts of interest, including several provisions in December 2013 following constructive discussions with the FCA on the topic. These revisions to Farmer Mac's Code of Business Conduct and Ethics are in addition to the independence requirements required by the SEC through NYSE listing standards with which the Farmer Mac Board must already comply. The Farmer Mac Board has also recently enhanced the provisions regarding the accountability of directors for any violations of the Code of Business Conduct and Ethics or other corporate policies such as those relating to insider trading. Specifically, Farmer Mac now requires each elected director and director nominee to execute a prospective director agreement that, if breached, would require a director's irrevocable resignation. The Farmer Mac Board has also implemented a mechanism for the Board to request the President of the United States to remove an appointed member.

Farmer Mac's Code of Business Conduct and Ethics includes robust provisions regarding the identification of both potential and actual conflicts of interest, the procedures to be followed when a conflict of interest is deemed to exist, and the consequences associated with a violation of the Code or related corporate policies. In view of these provisions, together with the other safeguards that the Farmer Mac Board has adopted such as the prospective director agreement, Farmer Mac believes that further regulation by the FCA in this area is unnecessary. The FCA recognized the limitations of regulation regarding conflicts of interest in its 1994 rulemaking, noting that the appropriateness of a director's action in a potential conflict situation should be evaluated in light of the specific factual circumstances, that recusal is just one possible way in which a conflict of interest can be resolved, and that procedures for conflict resolution were better left to be specified and implemented by Farmer Mac.⁹ There have been no significant issues related to unresolved conflicts of interest at Farmer Mac or substantial changes to Farmer Mac's policies on conflicts of interest or in Farmer Mac's Board structure during the ensuing 20 years that would necessitate the FCA to re-evaluate its approach to the regulation of conflicts of interest.

⁹ See 59 Fed. Reg. at 9626.

Director Nominations and Elections (ANPRM Questions 4 through 7)

Farmer Mac's process for director nominations and elections has been modernized and improved during the last eighteen months while respecting the representational aspect of the election of directors. These enhancements, including the adoption of advance notice provisions and director eligibility provisions, have been effective in promoting dialogue with Farmer Mac's stockholders, identifying qualified candidates for directors, and improving transparency for all stockholders. Farmer Mac believes that its process for director nominations and elections does not involve issues of safety and soundness, and the Charter Act contains no provisions prescribing procedures or regulations in this area. Farmer Mac therefore does not believe that any new regulations by the FCA are warranted that would prescribe the details of areas including: the structure of Farmer Mac's nominating committee (currently the Corporate Governance Committee); the role of Farmer Mac's appointed directors in the nominating process; mechanisms such as floor nominations for adding director-candidates to the ballot at Farmer Mac's annual stockholder meetings; or other director nomination guidelines. Farmer Mac believes that an expansion by the FCA of its purview to regulate areas such as the nomination and election of members of the Farmer Mac Board, the content of corporate bylaws, and the conduct of stockholder meetings would be unnecessary. Although the ANPRM contemplates a role for the FCA in regulating the process of how Farmer Mac directors are nominated, the SEC has already adopted numerous rules for disclosures to stockholders in connection with the solicitation of proxies to elect directors, and the NYSE has already adopted rules relating to nominating committees. These SEC and NYSE rules fully apply to Farmer Mac, and Farmer Mac has consistently complied with them.

Farmer Mac's Corporate Governance Committee, which functions as Farmer Mac's nominating committee, facilitates the selection of director nominees for recommendation to the full Board. The Farmer Mac Board in turn considers the Corporate Governance Committee's recommendations and approves a recommended slate of nominees for consideration by Farmer Mac's voting stockholders at the annual meeting of stockholders. The Farmer Mac Board has made a conscious decision to give its Corporate Governance Committee a representative character. Specifically, Farmer Mac's bylaws require its Corporate Governance Committee to be comprised of two Board members appointed by the President of the United States (one of whom serves as the chairman of the Committee) and two representatives from each of the two elected classes of directors. The Farmer Mac Board chooses which of its members will serve on the committee, and all of the members of the committee are "independent" as defined under Farmer Mac's Corporate Governance Guidelines, which prescribe independence criteria that meet or exceed all standards for director independence under applicable SEC and NYSE rules. To further promote the representative character of the Corporate Governance Committee, Farmer Mac's bylaws require that at least one appointed director, one Class A director, and one Class B director be present to constitute a quorum. This provides a mechanism by which all classes of directors may be involved in the recommendation of director nominees to the Farmer Mac Board, as well as have an equal opportunity to oversee Farmer Mac's corporate governance. In February 2014, the Farmer Mac Board amended its Corporate Governance Guidelines to provide that any proposed director nominee recommended by the Corporate Governance Committee or approved by the Farmer Mac Board to be elected by either the holders of Farmer Mac's Class A or Class B stock requires the affirmative vote of at least one Corporate

Governance Committee member or member of the Farmer Mac Board, as applicable, elected to the Farmer Mac Board by the holders of the same class of stock. Farmer Mac believes that the existing balanced structure of its Corporate Governance Committee is appropriate and consistent with best practices in corporate governance. The participation of both appointed directors and elected directors is also consistent with the approach Farmer Mac believes Congress intended for the entire Board (including appointed directors) to fill a Board vacancy for an elected member rather than the vacancy being filled by just the class of directors for which a vacancy exists.¹⁰

In identifying potential director candidates, the Corporate Governance Committee encourages the input and recommendations of other Farmer Mac Board members, management, stockholders, and other stakeholders. The Committee often receives multiple recommendations for potential director candidates in any one year and considers the criteria set forth in Farmer Mac's bylaws and the Corporate Governance Guidelines, as well as a policy statement on directors adopted by the Farmer Mac Board that expresses the general principles that should govern director selection and conduct, in evaluating all potential candidates. In conjunction with its review of these criteria, the Corporate Governance Committee reviews, on an annual basis, the appropriate qualifications, skills, and characteristics required of Farmer Mac Board members in the context of the composition of the Farmer Mac Board as a whole at that point in time. The Corporate Governance Committee's assessment includes a Farmer Mac Board member's qualification as to independence, as well as issues of judgment, skills, and financial expertise, all in the context of an assessment of the perceived needs related to the effective operation of the Farmer Mac Board and its committees at that point in time.

The Corporate Governance Committee strives to identify and retain as members of the Farmer Mac Board individuals who have the qualities, business background, and experience that will enable them to contribute significantly to the development of Farmer Mac's business and its future success. The Farmer Mac Board has determined that its elected members should be comprised of individuals with a variety of business backgrounds and experiences who have a broad perspective and good record of accomplishment as senior members of agricultural or other relevant business entities; as agricultural, rural utilities, or commercial lenders; as accountants or auditors; or as entrepreneurs. The Farmer Mac Board has also determined that its membership should reflect diversity in the broadest sense, including diversity of geography, background, gender, race and ethnicity, age, and experience and training from different disciplines and industries. In recommending a nominee for director, the Corporate Governance Committee also considers an individual's ability to represent objectively all of Farmer Mac's stockholders, as well as his or her character, judgment, fairness, and overall ability to serve Farmer Mac. The Corporate Governance Committee will consider all proposed nominees, including stockholder nominees, in light of the qualifications discussed above and the assessed needs of the Farmer Mac Board at the time.

¹⁰ See 12 U.S.C. § 2279aa-2(b)(4)(A); cf. 12 U.S.C. § 2279aa-2(b)(6)(B).

In 2012, the Farmer Mac Board substantially revised Farmer Mac's bylaws to include advance notice requirements for the submission of director nominations and business proposals by Farmer Mac's stockholders. The Farmer Mac Board further clarified the minimum eligibility criteria for director nominees contained in the advance notice provisions in December 2013 following constructive discussions with the FCA about how the eligibility criteria could be made more objective. Farmer Mac's minimum qualification criteria for director nominees are not unusual for a public company, and stockholders seeking to nominate credible and relevant candidates for election to the Farmer Mac Board should have little trouble complying with the director qualification criteria set forth in Farmer Mac's bylaws.

In implementing the advance notice provisions of the bylaws, the Farmer Mac Board sought to create an orderly, transparent, and fair process. This process allows Farmer Mac's voting stockholders to submit business proposals or director nominations while ensuring that the Farmer Mac Board has sufficient time to evaluate these proposals and nominations and provide stockholders with the Farmer Mac Board's recommendations and other information necessary for stockholders to make informed voting decisions. The advance notice provisions contained in Farmer Mac's bylaws have become a well-accepted feature included in the bylaws of public corporations and act as a safeguard against stockholders who may nominate directors or present business proposals close to the date or on the floor of an annual meeting in an effort to further their own agenda to the detriment of the best interests of all other stockholders. These provisions also prevent any Farmer Mac stockholder from being disenfranchised from the director election process because each stockholder has an equal opportunity to propose a director nominee to the Farmer Mac Board regardless of which candidates are recommended by Farmer Mac's Corporate Governance Committee and approved for inclusion on the ballot by the Farmer Mac Board. The Farmer Mac Board believes that all stockholders should have the right to participate in the corporate governance process, which includes the right to nominate, and solicit proxies in support of the election of, directors in opposition to the directors nominated by the Farmer Mac Board. Through the nomination process described in Farmer Mac's bylaws, stockholders can make the Farmer Mac Board and other stockholders aware of a competing slate of candidates for election to the Farmer Mac Board, as well as the reasons for proposing a competing slate and the qualifications of each member of such slate. The advance notice provisions are a key component of that process and are intended to ensure that the nomination process is as transparent as possible by facilitating the ability of Farmer Mac stockholders to be properly informed of those seeking election to the Farmer Mac Board. Indeed, advance notice provisions ensure that large stockholders are not able to usurp the director nomination process on the eve of an annual meeting to the detriment of other smaller stockholders.

During the 2013 proxy season, the first proxy season after Farmer Mac adopted advance notice provisions, three stockholders were able to use the new procedures to ensure that their preferred candidates appeared on the ballot for the election of directors at Farmer Mac's June 2013 annual stockholders' meeting. The Farmer Mac Board recommended the election of these stockholder-nominated directors, and they were ultimately elected to the Farmer Mac Board, which demonstrates that

the new advance notice provisions do not disenfranchise voting stockholders. As an added benefit, stockholders were provided with significant transparency in the nomination and election of directors through Farmer Mac's 2013 proxy statement publicly filed with the SEC and sent to all of Farmer Mac's voting stockholders, which allowed the stockholders to make informed voting decisions. There is no evidence that Farmer Mac's corporate governance enhancements related to director nominations and elections are not working as intended to further Farmer Mac's continuing public mission. One indication of stockholders' comfort with Farmer Mac's director nomination process is that no voting stockholder utilized the advance notice option for proposing director nominees for the 2014 proxy season. Consequently, there does not appear to be any need for the FCA to impose additional regulations on Farmer Mac's existing process for nominating and electing directors.

One of the possible mechanisms identified by the ANPRM for stockholders to add director-candidates to the ballot at Farmer Mac's annual meeting of stockholders is floor nominations. In 2012, the Farmer Mac Board made a conscious decision to eliminate the possibility of floor nominations because it concluded that floor nominations have the potential for stockholders to usurp the director nomination process to the detriment of other stockholders without providing sufficient information or time for other stockholders to make informed voting decisions. Farmer Mac believes that its current advance notice provisions are preferable to floor nominations because advance notice provisions provide the benefits of: a more orderly process for conducting a stockholders' meeting; a better opportunity for the Farmer Mac Board to inform stockholders of the nominees proposed for election at a stockholders' meeting and to make informed recommendations or present alternatives to stockholders; and enabling stockholders to be in a better position to determine whether they will attend a stockholders' meeting or grant a proxy for the business to be conducted at the meeting. Farmer Mac's advance notice of director nomination provisions do not in any substantive manner interfere with the ability of the holders of Class A and Class B common stock to elect representative directors. The advance notice provisions merely provide certain procedural safeguards relating to the process by which candidates for election to the Farmer Mac Board are nominated.

Director Representational and Fiduciary Duties (ANPRM Questions 8 through 10)

The ANPRM contemplates a role for the FCA in prescribing the fiduciary duties of directors of Farmer Mac and suggests that because of Farmer Mac's public mission, those duties may be different from the fiduciary duties required of directors of other public corporations. Farmer Mac does have a public mission to fulfill, but the fiduciary duties of its directors are substantially the same as those of any other public company – the twin duties of care and loyalty. Any expansion by the FCA of its regulatory purview beyond its long-standing approach to this issue to alter the nature of fiduciary duties of members of the Farmer Mac Board would represent a significant departure from the corporate governance model that Congress chose for Farmer Mac and could create inconsistencies with the approaches of other regulators. In fact, it is worth noting that although Congress made clear its willingness to legislate on issues of corporate governance through the passage of the Sarbanes-Oxley Act and the Dodd-Frank Act, in neither of these actions, nor in any other legislative circumstances, has Congress demonstrated a willingness to develop federal law regulating the fiduciary duties of directors. Indeed, Congress has not

asked the SEC to adopt regulations to prescribe the fiduciary duties of directors of public companies.¹¹ It is therefore not unreasonable to question why the ANPRM identifies this as an area for potential rulemaking by the FCA.

Of the three questions related to fiduciary duties, question 10¹² is the most concerning to Farmer Mac because it raises issues that Farmer Mac thought had been resolved more than 20 years ago during the promulgation of Farmer Mac's conflict of interest regulations by the FCA. In the supplementary materials to that rulemaking, the FCA recognized that Farmer Mac's directors owed fiduciary duties to Farmer Mac and all of its stockholders rather than to the electing class of stockholders and observed that directors should share the perspectives of electing stockholders with the full Board so that each director can act in the best interests of Farmer Mac and all of its stockholders.¹³ The FCA explained that although the Farmer Mac Board is representative in nature, Congress chose a corporate structure to govern Farmer Mac's operations, and common law corporate principles affirm the fiduciary duty of directors to act in the best interests of Farmer Mac and all of its stockholders, with the representative character of the Farmer Mac Board not altering this fiduciary duty of directors.¹⁴ The FCA concluded that "irrespective of the manner of appointment or election, each director has a duty to act in the best interests of [Farmer Mac] and all of its shareholders."¹⁵

Based on this discussion in the 1994 rulemaking, Farmer Mac was surprised to see that the ANPRM appears to be opening up the possibility of the FCA facilitating a "transparent representational relationship" between Farmer Mac's elected directors and the voting stockholders that elect those directors. In most cases, this type of relationship would violate a Farmer Mac director's fiduciary duties to Farmer Mac. Although the ANPRM also references an interest in ensuring the protection of Farmer Mac's proprietary business information, it is hard to imagine how this could be accomplished in a "transparent" relationship with selected stockholders. Such a "transparent" relationship would likely also

¹¹ Although Farmer Mac is a federally-chartered corporation, it is likely that a federal court, if called upon to adjudicate the fiduciary duties of Farmer Mac's directors, would seek to rely on the jurisprudence of the courts of the State of Delaware as persuasive legal authority. As the legal domicile for the vast majority of public companies, Delaware has the most evolved and developed case law on directors' fiduciary duties.

¹² "How might FCA facilitate maintaining a transparent representational relationship between elected directors and Class A and B stockholders while ensuring the protection of Farmer Mac's proprietary business information?"

¹³ See 59 Fed. Reg. at 9624.

¹⁴ *Id.* The FCA noted that although some public companies have boards with representative features analogous to Farmer Mac's, the fiduciary responsibilities of directors are unchanged by the representational aspects of these boards, according to an official from the SEC with whom the FCA consulted, and each director owes fiduciary duties to Farmer Mac and its stockholders collectively.

¹⁵ *Id.* The FCA noted that the legislative history supported this interpretation by indicating that "There is to be no distinction between the three categories of directors in terms of their duties and responsibilities as directors to [Farmer Mac] and all stockholders." (citing Senate Report 100-230, p. 52 (November 20, 1987)).

raise serious concerns about selective disclosure and insider trading, both of which are heavily regulated by the SEC.

The role of a Farmer Mac director is not to represent and protect the interests of the entities comprising the class of stockholders that elected the director or to foster a transparent relationship with those entities. Rather, each director of Farmer Mac owes Farmer Mac and all of its stockholders strict and uncompromised compliance with his or her fiduciary duties. Any fiduciary duties that a director may owe to a Class A or Class B stockholder does not modify, or excuse a director from fully complying with, the fiduciary duties the director owes to Farmer Mac and all of its stockholders. If a director cannot comply with his or her fiduciary duties to Farmer Mac on a particular matter, the director is required to recuse himself or herself from consideration of that matter.

As directors of a public company, particularly one created by Congress to fulfill an important mission, Farmer Mac's directors are expected to adhere to the highest standards of corporate governance in complying with their fiduciary duties. Under their fiduciary duties of loyalty and care, directors are required to protect and hold confidential all non-public information obtained pursuant to their directorship position without the express authorization of the Farmer Mac Board to disclose the information. A board should function as a collegial body, and directors should respect the confidentiality of all discussions that take place in the boardroom. Appropriate governance requires the maintenance of the confidentiality of boardroom discussions and the fabric of trust and collegiality that should exist among directors. The maintenance of confidentiality of information discussed in the boardroom is also critical to prevent the corrosive effect that breaches of confidentiality have on a board's deliberative process and the trust and confidence directors have in each other. Maintaining confidentiality is also essential for the protection of the individual directors because directors can be responsible for any misleading statements that are attributable to them. A leak of market sensitive information could constitute a civil and criminal violation of the federal securities laws and cause an investigation by the SEC, FINRA, or the U.S. Attorney. Many of the members of the Farmer Mac Board serve multiple constituencies, including some entities that view Farmer Mac as a competitor or that compete with business partners of Farmer Mac. The disclosure of confidential information to these third parties could provide them with an unfair competitive advantage.

Farmer Mac does not prevent its directors from being a party to an agreement with either a Class A or Class B stockholder, although Farmer Mac's bylaws appropriately place some restrictions on the types of agreements that may be made. The bylaws restrict a Farmer Mac director from being a party to any agreement or arrangement that, in general, would be inconsistent with the director's compliance with his or her fiduciary duties as a director to Farmer Mac. Some of the prohibited agreements include: any agreement about the positions to be taken on issues or questions discussed in Farmer Mac's boardroom; any agreement concerning how the director will act or vote in his or her capacity as a director of Farmer Mac on any issue or question presented for consideration; any agreement intended to limit or interfere with a director's ability to comply with the director's fiduciary duties to Farmer Mac; any agreement that requires a director to consider the interests of a person or entity other than Farmer Mac and its stockholders in complying with the director's fiduciary duties as a director of Farmer Mac; and

any undisclosed agreements with a third party related to compensation, reimbursement, or indemnification in connection with service as a Farmer Mac director. Farmer Mac believes that these restrictions are reasonable, consistent with sound principles of corporate law on the fiduciary duties of directors, and do not interfere with an elected director's ability to be "representative" of the class of stockholders that elected him or her.

Board Responsibilities in Risk Governance (ANPRM Questions 11 through 13)

Farmer Mac recognizes that risk oversight is of the utmost importance to its operation in a safe and sound manner and agrees that the Farmer Mac Board should be an active participant in Farmer Mac's risk governance, as it has been throughout Farmer Mac's history. Farmer Mac believes that its existing risk governance framework is effective. As described in more detail in Farmer Mac's proxy statement,¹⁶ that framework empowers Farmer Mac's executive officers with the primary responsibility for managing the day-to-day risks associated with Farmer Mac's business, including operational, credit, asset and liability management, legal, human resources, regulatory, reputational, and political risks. The Farmer Mac Board currently oversees Farmer Mac's enterprise risk primarily through its Corporate Governance Committee and the delegation of specific areas of risk to the other six standing Board committees, as well as through Farmer Mac's internal audit and internal credit review functions. Each of the committees and management report at each Board meeting to the Corporate Governance Committee about the risks within their respective jurisdictions, and the Corporate Governance Committee provides a report to the full Board at each Board meeting. As a public company, Farmer Mac also is required by the Sarbanes-Oxley Act to develop, regularly evaluate, and certify the effectiveness of its internal controls and procedures, which is also an important element of Farmer Mac's existing risk governance framework.

The Farmer Mac Board recognizes that effective corporate governance is an ongoing process that evolves to address current circumstances and developments. Indeed, the Farmer Mac Board has been engaged in discussions for several years about the best framework to manage risk at Farmer Mac. Based on these discussions and the monitoring of emerging best practices at financial institutions, the Farmer Mac Board at its April 2014 meeting approved the formation of a separate Risk Committee in connection with Farmer Mac's annual Board organizational meeting scheduled for June 2014. Farmer Mac will establish the Risk Committee pursuant to a written charter approved by the Farmer Mac Board. The Risk Committee will not have any member of management on it and will be comprised entirely of directors who meet Farmer Mac's strict independence standards. The Risk Committee's charter will require the Committee to meet regularly and to report directly to the Farmer Mac Board and will task the Committee with oversight over the implementation of a risk governance framework for Farmer Mac and active oversight of Farmer Mac's risk-taking activities. The charter for the Risk Committee also will specify the resources available to the Committee (including the ability to retain external advisors) and provide for ongoing training for members and an annual self-assessment.

¹⁶ The SEC amended its rules in 2009 to require public companies to disclose information about the role of their boards in risk oversight, and Farmer Mac has complied with these rules since their adoption.

General Farmer Mac Board Governance (ANPRM Questions 14 through 16)

Question 14 of the ANPRM suggests that the FCA is considering issuing regulations to “address difficulties Farmer Mac may have as a GSE in complying with modern governance standards because of statutory and regulatory requirements regarding the structure, selection, and composition of its board.” However, the ANPRM cites no evidence that Farmer Mac has in fact had any difficulty as a GSE in complying with any of the requirements imposed on it as a public company. To the contrary, Farmer Mac has experienced no difficulty in meeting or exceeding in some cases all of its compliance obligations, whether as a public company, an NYSE-listed company, or a GSE. The ANPRM does not identify any specific statutory or regulatory requirements imposed on Farmer Mac as a GSE that conflict with any of the requirements imposed on Farmer Mac as a publicly-traded company, whether by the U.S. Congress, the SEC, or the NYSE, and Farmer Mac is not aware of any such conflicting compliance obligations.

Question 15 of the ANPRM suggests that the FCA envisions a possible regulatory role in fostering diversity in Farmer Mac’s directors, officers, and employees. As Farmer Mac explained in a comment letter to the FCA’s advance notice of proposed rulemaking issued on June 16, 2011 (12 CFR Part 652, RIN 3052-AC70), Farmer Mac fully supports diversity in its personnel and in its marketing efforts as it strives to fulfill its mission as the secondary market serving rural America. Farmer Mac values the many benefits of a diverse and inclusive workforce and believes that such a workforce provides competitive advantages and promotes an environment where varying ideas and viewpoints are discussed in a way that is healthy for Farmer Mac’s business.

As part of Farmer Mac’s commitment to internalize the concept of diversity as part of its corporate culture, in December 2013 the Farmer Mac Board formed a Diversity Committee to gather information, raise awareness, and make recommendations on issues related to diversity and to formalize the process for bringing issues related to diversity before the Farmer Mac Board. The primary responsibilities of the Diversity Committee are to: (1) review, oversee, and advise on Farmer Mac’s diversity and inclusion initiatives, including efforts to identify, select, hire, and/or retain qualified and diverse individuals to serve in various capacities at Farmer Mac; and (2) report its findings and recommendations regarding those efforts to the Corporate Governance Committee from time to time, as requested.

In furtherance of its board diversity goals, the Farmer Mac Board also adopted a statement in the Corporate Governance Guidelines in February 2014 regarding its broad perspective of diversity, which includes diversity of geography, background, gender, race and ethnicity, age, and experience and training from different disciplines and industries. The adoption of this statement on diversity falls squarely within the initiative already promoted by the SEC during the past five years through its passage of rules requiring enhanced disclosure in proxy statements regarding the consideration of diversity in the process by which director candidates are considered for nomination.¹⁷ At the same time, the SEC did not adopt

¹⁷ See Item 407(c) of SEC Regulation S-K.

any specific definition of diversity.¹⁸ The Farmer Mac Board believes that it has appropriately embraced this initiative.

Farmer Mac embraces the value of diversity and is committed to having a workplace that is diverse and free from discrimination. However, Farmer Mac does not believe that the issue of diversity is a safety and soundness issue or related to compliance with applicable statutory requirements contained in the Charter Act (other than the affirmative action plan already required of Farmer Mac and all other FCS institutions with more than twenty employees by Section 4.38 of the Farm Credit Act of 1971, as amended). Accordingly, Farmer Mac does not believe it is an area appropriate for regulation by the FCA, especially absent any change in law that requires or even suggests that the FCA should revise its regulations related to Farmer Mac to foster diversity. Consistent with this approach, Farmer Mac believes that any strategies related to the implementation of its commitment to diversity should be left to the discretion of the Farmer Mac Board and management, who are in the best position to fully understand Farmer Mac's business needs. As to the promotion of diversity in the selection of Farmer Mac directors, Farmer Mac believes that any proposed regulations would likely be constrained by the realities of the statutory limitations on the structure of the Farmer Mac Board. Five members of the Farmer Mac Board are appointed by the President of the United States, so their appointment is completely out of the control of Farmer Mac and any FCA regulation. The election of the remaining Farmer Mac Board members is subject to the rights of voting stockholders to elect their desired candidates, and Farmer Mac's voting common stock is concentrated in relatively few holders compared to most public companies. As a result, Farmer Mac's ability to affect the composition of the Farmer Mac Board in seeking diversity may be limited in ways that do not apply to many other public companies.

Question 16 of the ANPRM asks for other issues related to Farmer Mac's corporate governance that the FCA should consider addressing through regulation. Consistent with the FCA's recent focus on issues related to consolidation within the FCS, Farmer Mac would like to point out the effect of FCS consolidation on Farmer Mac's Class B stockholder base for the FCA in considering the implications for the election of directors to the Farmer Mac Board. The Charter Act restricts ownership of Farmer Mac's Class A voting common stock to banks, insurance companies, and other financial institutions that are not institutions of the FCS and Class B voting common stock to FCS institutions. The Charter Act further provides that "no stockholder, other than a holder of class B stock, may own, directly or indirectly, more than 33% of the outstanding shares of such class of the voting common stock."¹⁹ Thus, the Charter Act

¹⁸ As the SEC noted in its adopting release, "[w]e recognize that companies may define diversity in various ways, reflecting different perspectives. For instance, some companies may conceptualize diversity expansively to include differences of viewpoint, professional experience, education, skill and other individual qualities and attributes that contribute to board heterogeneity, while others may focus on diversity concepts such as race, gender and national origin. We believe that for purposes of this disclosure requirement, companies should be allowed to define diversity in ways that they consider appropriate. As a result we have not defined diversity in the amendments." *See* Release Nos. 33-9089 and 34-61175; IC-29092; File No. S7-13-09.

¹⁹ 12 U.S.C. § 2279aa-4(a)(5).

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prescribes ownership limitations for holders of Class A Stock but expressly excepts from ownership limitations the holders of Class B Stock. This different treatment as to ownership limitations did not raise any concerns during the years immediately following Farmer Mac's creation. Over the years, however, the ownership of Farmer Mac's Class B stock has become extremely concentrated, primarily as a result of consolidation within the FCS. From 1990-1992, there were 11 different holders who owned at least 5% of the Class B stock, during which time the largest holder owned approximately 12.64% of the outstanding Class B stock. From 1995-2003, there were 6-7 holders owning at least 5% of Class B stock, during which time the largest holder owned more than 30% of the Class B stock. These consolidation trends have continued to the present day, when nearly 98% of Farmer Mac's Class B stock is owned by only four entities (including affiliates) and four of the five seats on the Farmer Mac Board elected by Class B stockholders are effectively controlled by only two entities as a result of the cumulative voting mechanism used for the election of Farmer Mac's directors.

Farmer Mac believes that it has implemented an effective corporate governance framework that is consistent with current best practices in corporate governance, including procedures for resolving conflicts of interest, nominating and electing directors, and providing guidance about the fiduciary duties of directors. This existing framework, coupled with the more recent actions of the Farmer Mac Board that proactively address risk governance and diversity, argue strongly for the proposition that there is no current need for FCA to extend its regulatory purview beyond areas that do not relate to Farmer Mac's safety and soundness. This is particularly true because Farmer Mac is also subject to regulation by the SEC and the NYSE, whose purview corporate governance issues have historically fallen within. For the reasons discussed above, Farmer Mac believes that additional rulemaking in the areas identified in the ANPRM is unnecessary. Farmer Mac appreciates the opportunity to comment on the ANPRM and encourages the FCA to consider the comments contained in this letter as it considers any future proposed regulations.

Very truly yours,

A handwritten signature in blue ink, reading "Stephen P. Mullery". The signature is fluid and cursive, with a stylized "S" and "M".

Stephen P. Mullery
Senior Vice President – General Counsel

cc: Farmer Mac's Board of Directors
Timothy L. Buzby, President and CEO